IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 196 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVAM ENGINEERS & SHIPWRIGHTSPVT. LTD.
Versus
H K DAVE PVT. LTD. AND OTHERS

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Appearance :
MR KIRAN C MEHTA for Appellant.
MR DM AHUJA for Respondent Nos.1 - 7.
- for Respondent No. 8.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 26/02/2007

ORAL JUDGMENT

The appellant is the original plaintiff of Special Civil Suit No.14/2003. In the aforesaid suit, case of the plaintiff is that the plaintiff is a private limited company incorporated under the Companies Act, 1956. Defendant no.1 is also a company incorporated under the

Companies Act, 1956. Plaintiff entered into a contract dated 5-12-1996 with defendant no.1 company for hiring barge named “Jay Yamini”. It is the case of the plaintiff that it has handled the cargo of defendant no.8 from 5-12-1996 to 13-5-1999. Defendants were in need of barges and the plaintiff has given barges on hire and a contract was entered into between the parties, which was initially for 15 months. The contract was executed in the year 1996. It is also the case of the plaintiff that even though the period of agreement came to an end on 12-3-1998, the contract never came to an end and the same was made effective by oral understanding and that the defendant continued to obtain services of barge and the plaintiff continued to give such services till 31st May, 1999. It is the case of the plaintiff that, on settling the account, the plaintiff is entitled to recover Rs.27,53,071/-. It is also the case of the plaintiff that as per the agreement dated 16-9-1998 barge was required to be used till the end of August 1999 but instead of that the defendant wrote a letter that they shall not use barge after 15-9-1999, however, it is the case of the plaintiff that the defendants have utilized the services till 31st May, 1999 and, thereafter, abruptly terminated the contract on 31st May, 1999 because of which the plaintiff has suffered loss for the period between June, July and August 1999 at the rate of Rs.3.60 Lacs per month, which comes to Rs.10.80 lacs. On these and other such grounds, aforesaid money suit is filed by the plaintiff. The plaintiff also prayed for interim injunction restraining the defendants from transferring, alienating or creating any further charge on the property mentioned in paragraph 20 of the interim injunction application. Said suit is resisted by the defendants on various grounds. One of the grounds, which was pressed into service by the defendants was limitation, as according to the defendants, suit is barred by limitation.

2) By the impugned order, learned trial Judge rejected injunction

application as it was found that the suit is barred by limitation, as the suit is filed on 18-1-2003 as against that the agreement is dated 5-12-1996. Accordingly, the suit is filed after a period of six years and since it is not filed within three years, as per Article 54 of the Limitation Act, the suit is time barred. Accordingly, learned trial Judge has rejected prayer for injunction.

3) Mr.Mehta, learned advocate for the appellant submitted that, from time to time, the payment was made by the defendants and the suit was filed two days prior to expiry of limitation period. He, however, conceded that defendant no.1 is a company incorporated under the Companies Act and, therefore, even if the company goes in winding up and in case the plaintiff succeeds in suit, it can claim its rights as an unsecured creditor.

4) There is nothing on record to show that the defendant is likely to transfer or sell away the property to defeat the rights of the plaintiff. The suit is filed almost after three years or two days prior to limitation period and in between also, there is nothing on record to show that the defendant has ever tried to transfer the property to defeat the rights of the plaintiff. Since defendant no.1 company is incorporated under the Companies Act, in case the suit is decreed, the plaintiff can claim its rights. There is nothing to show that defendant no.1 company's financial position is weak. Considering all these facts, in my view, discretionary order passed by the trial Court is not required to be interfered with by this Court. Accordingly, I do not find any substance in this appeal.

5) Subject to what is stated above, this Appeal from Order is dismissed. No order as to costs.

6) Mr.Mehta, learned advocate for the appellant requested that since the suit is of 2003, the same may be expedited.

7) Learned trial Judge, if possible, may try to dispose of the suit by the end of December 2007.

(P.B.Majmudar, J.)

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